Universiti Kebangsaan Malaysia v Edgenta Facilities Management Sdn Bhd

HIGH COURT (KUALA LUMPUR) — SUIT NO WA-22NCVC-514–08 OF 2020
ARZIAH MOHAMED APANDI JC
25 MARCH 2025

Contract — Breach — Interpretation of clause — Parties' intention — Plaintiff and defendant entered into laundry services contract — Defendant failed to supply new linens — Whether defendant was contractually obligated to supply new linens rather than used or recycled linens — Whether plaintiff's penalty calculation method and amount were valid — Whether defendant's counterclaim for allegedly wrongful deductions for daily 'owing linens' had merit — Whether defendant had breached contract

Evidence — Admissibility — Parol evidence rule — Plaintiff and defendant entered into laundry services contract — Defendant failed to supply new linens — Contract was silent on whether linens must be 'new' — Whether evidence of parties' understanding admissible to establish that linens must be 'new' — Evidence Act 1950 ss 91 & 92(b)

The present case concerned a laundry services contract ('the contract') between the plaintiff and the defendant for the plaintiff's hospital facility known as Pusat Perubatan Universiti Kebangsaan Malaysia. The contract required the defendant to provide laundry services including the supply of linens at a 'five par' level. The plaintiff claimed that the defendant failed to supply the required quantity of new linens by the deadline, resulting in a penalty claim of RM3,996,344.47 calculated according to a formula based on the amount of missing linens, the price per sheet, and the number of days delayed. The plaintiff's claim was grounded in cl 4.3 of Document 8 of the contract. The defendant denied such obligation, contending that the contract did not explicitly require new linens, and that they fulfilled their obligations by supplying a combination of new linens, existing linens from the previous vendor, and linens from Kementerian Kesihatan Malaysia. The defendant further argued that the plaintiff's penalty calculation was incorrect because it improperly included a 'number of days delayed' factor. The defendant had also filed a counterclaim of RM3,643,672.25 for the alleged wrongful deductions made by the plaintiff for daily 'owing linens' (not supplied as required). The main issues that arose were: (a) whether the defendant was contractually obligated to supply new linens rather than used or recycled linens ('the first issue'); (b) whether the plaintiff's penalty calculation method and amount were

valid — in this regard, the defendant disputed the plaintiff's claims for RM1,110,539.50 (penalties imposed on daily owing linens from September 2016 to September 2017), and RM2,533,132.75 (penalties imposed from January 2018 to July 2019), arguing that the plaintiff increased the one par level in the e-Laundry system without their knowledge ('the second issue'); and (c) whether the defendant's counterclaim for allegedly wrongful deductions had merit ('the third issue').

Held, allowing the plaintiff's claim (with costs) for RM3,996,344.47 with interest at 5%pa from the date of filing until full settlement, and dismissing the defendant's counterclaim with costs:

(1) It was evident that when the dispute was premised on the terms of the contract, the contract itself as a whole document must be considered including the factual matrix and background circumstances, business common sense, and commercial purpose. The court must take an objective approach to determining the parties' intentions. In the present case, the court found that despite the absence of the explicit word 'new' term, ample evidence had been established by the plaintiff that both parties intended and understood that new linens were required and that the defendant's own conduct and correspondence supported this interpretation (see paras 25 & 29).

(2) The parol evidence rule did not prevent parties from introducing evidence about events after the contract was signed, such as subsequent modifications, performance or breaches. The plaintiff had rightly pointed out the landmark case of *Kluang Wood Products Sdn Bhd & Anor v Hong Leong Finance Bhd & Anor* [1999] 1 MLJ 193 where the Federal Court established that where a document was silent on a matter not inconsistent with its terms, the evidence of surrounding circumstances may be admitted. In the present case, the contract was silent on whether linens must be 'new'. The evidence of the parties' understanding fell squarely within proviso (b) to s 92 of the Evidence Act 1950 and therefore was admissible to establish this contractual requirement (see paras 39, 41 & 46).

(3) With respect to the second issue, the evidence proved that the defendant had no supporting documents to support their allegations. In contrast, the plaintiff had shown that the defendant only raised the objections to daily owing penalties after receiving the plaintiff's demand letter in May 2017, despite claiming penalties had been wrongfully imposed since September 2016. The first formal objection was made on 30 August 2017, despite claiming wrongful deductions since September 2016 (see para 52).

(4) In relation to the penalty calculation dispute, the court analysed the evidence and agreed with the plaintiff's argument because the contractual

interpretation of the phrase 'until the five par requirement is fulfilled' in cl 9 of Document 8 logically incorporated a time element, supporting the plaintiff's inclusion of 'days delayed' in their formula. The penalty calculation served the legitimate commercial purpose of encouraging timely compliance with contractual obligations. The court found the plaintiff's calculation reasonable, properly documented, and consistent with contractual terms. The total amount of RM3,996,344.47 was justified and supported by the evidence (see paras 59 & 67).

(5) With regard to the third issue, the court found that the plaintiff was contractually entitled to increase linen requirements based on hospital needs, as evidenced by multiple provisions in the contract. The court determined that the defendant's contention that it was unaware of the requirement increase wasn't credible since they had full access to the e-Laundry system, which tracked requirements in real-time. They had their own staff who were specifically assigned to monitor the system. The court noted that the timing of the counterclaim suggested it was a tactical response rather than a genuine grievance. Despite ample prior opportunity to object, it was only raised after the plaintiff's penalty claim. The inconsistencies in the amounts claimed further undermined credibility (see paras 83–85).

(6) In light of the above evidentiary deficiencies and inconsistencies, the defendant had failed to discharge its burden of proof in establishing its counterclaim. The court's application of the adverse inference of s 114(g) of the Evidence Act 1950 allowed courts to presume that evidence deliberately withheld would be unfavourable to the party withholding it. The plaintiff had appropriately invoked the said presumption for the defendant's failure to call their witnesses who were directly involved in this matter at that material time (see para 86).

(7) For the reasons stated above, the court found that the defendant had breached the contract by failing to supply new linens as required, the plaintiff was entitled to impose the penalty as calculated, and the defendant's counterclaim was without merit (see para 87).

[Bahasa Malaysia summary

Kes semasa melibatkan kontrak perkhidmatan dobi ('kontrak tersebut') antara plaintif dan defendan untuk kemudahan hospital plaintif yang dikenali sebagai Pusat Perubatan Universiti Kebangsaan Malaysia. Kontrak tersebut memerlukan defendan menyediakan perkhidmatan dobi termasuk pembekalan linen pada tahap 'lima par'. Plaintif mendakwa defendan gagal membekalkan kuantiti linen baharu yang diperlukan pada tarikh akhir, menyebabkan tuntutan penalti sebanyak RM3,996,344.47 yang dikira mengikut formula berdasarkan jumlah linen yang kurang, harga setiap helaian, dan bilangan hari lewat. Tuntutan plaintif adalah berdasarkan klausa 4.3

Dokumen 8 kontrak tersebut. Defendan menafikan kewajipan tersebut, dengan alasan kontrak tersebut tidak menghendaki linen baharu secara jelas, dan mereka telah memenuhi kewajipan mereka dengan membekalkan gabungan linen baharu, linen sedia ada daripada vendor terdahulu, dan linen daripada Kementerian Kesihatan Malaysia. Defendan seterusnya berhujah bahawa pengiraan penalti plaintif adalah tidak betul kerana ia secara tidak wajar memasukkan faktor 'bilangan hari lewat'. Defendan juga telah memfailkan tuntutan balas sebanyak RM3,643,672.25 untuk dakwaan potongan salah yang dibuat oleh plaintif untuk 'linen terhutang' harian (tidak dibekalkan seperti yang dikehendaki). Isu-isu utama yang timbul ialah: (a) sama ada defendan diwajibkan secara kontrak untuk membekalkan linen baharu dan bukannya linen terpakai atau kitar semula ('isu pertama'); (b) sama ada kaedah dan amaun pengiraan penalti plaintif adalah sah — dalam hal ini, defendan mempertikaikan tuntutan plaintif sebanyak RM1,110,539.50 (penalti dikenakan ke atas linen terhutang harian dari September 2016 hingga September 2017), dan RM2,533,132.75 (penalti yang dikenakan dari Januari 2018 hingga Julai 2019), dengan alasan plaintif meningkatkan tahap satu par dalam sistem e-Laundri tanpa pengetahuan mereka ('isu kedua'); dan (c) sama ada tuntutan balas defendan untuk potongan salah yang didakwa mempunyai merit ('isu ketiga').

Diputuskan, membenarkan tuntutan plaintif (dengan kos) bagi jumlah RM3,996,344.47 dengan faedah pada kadar 5% setahun dari tarikh pemfailan sehingga penyelesaian penuh, dan menolak tuntutan balas defendan dengan kos:

(1) Adalah jelas bahawa apabila sesuatu pertikaian adalah berdasarkan terma kontrak, kontrak itu sendiri sebagai satu dokumen penuh harus dipertimbangkan termasuk matriks fakta dan keadaan latar belakang, akal budi perniagaan dan tujuan komersial. Mahkamah harus mengambil pendekatan objektif untuk menentukan niat pihak-pihak. Dalam kes semasa, mahkamah mendapati bahawa walaupun ketiadaan perkataan 'baru' yang jelas, keterangan yang mencukupi telah dibuktikan oleh plaintif bahawa kedua-dua pihak berniat dan memahami bahawa linen baru dikehendaki dan bahawa kelakuan dan surat-menyurat defendan sendiri menyokong tafsiran ini (lihat perenggan 25 & 29).

(2) Peraturan keterangan parol tidak menghalang pihak daripada mengemukakan keterangan tentang peristiwa selepas kontrak ditandatangani, seperti pengubahsuaian, pelaksanaan atau pelanggaran yang berikutnya. Plaintif telah membangkitkan dengan tepat kes yang menjadi mercu tanda iaitu *Kluang Wood Products Sdn Bhd & Anor v Hong Leong Finance Bhd & Anor* [1999] 1 MLJ 193 di mana Mahkamah Persekutuan menetapkan bahawa apabila sesuatu dokumen senyap mengenai perkara yang tidak bercanggah dengan termanya, keterangan keadaan sekeliling boleh diterima. Dalam kes semasa, kontrak tersebut

tidak menyatakan sama ada linen haruslah 'baru'. Keterangan berkaitan dengan persefahaman antara pihak-pihak secara tepatnya termasuk dalam proviso (b) kepada s 92 Akta Keterangan 1950 dan oleh itu boleh diterima untuk membuktikan keperluan kontrak ini (lihat perenggan 39, 41 & 46).

(3) Berkenaan dengan isu kedua, keterangan membuktikan defendan tidak mempunyai dokumen sokongan untuk menyokong dakwaannya. Sebaliknya, plaintif telah menunjukkan bahawa defendan hanya membangkitkan bantahan terhadap penalti yang terhutang setiap hari selepas menerima surat tuntutan plaintif pada Mei 2017, walaupun mendakwa bahawa penalti telah dikenakan secara salah sejak September 2016. Bantahan rasmi pertama dibuat pada 30 Ogos 2017, walaupun mendakwa terdapat potongan secara salah sejak September 2016 (lihat perenggan 52).

(4) Berhubung dengan pertikaian tentang pengiraan penalti, mahkamah menganalisis keterangan dan bersetuju dengan hujah plaintif kerana tafsiran kontraktual frasa 'until the five par requirement is fulfilled' dalam klausa 9 Dokumen 8 secara logiknya memasukkan elemen masa, menyokong pemasukan 'hari lewat' oleh plaintif dalam formulanya. Pengiraan penalti tersebut memenuhi tujuan komersial yang sah untuk menggalakkan pematuhan yang tepat pada masanya terhadap obligasi kontrak. Mahkamah mendapati bahawa pengiraan oleh plaintif tersebut adalah munasabah, didokumenkan dengan betul dan konsisten dengan terma kontrak. Jumlah keseluruhan RM3,996,344.47 tersebut adalah wajar dan disokong oleh keterangan (lihat perenggan 59 & 67).

(5) Berkenaan dengan isu ketiga, mahkamah mendapati plaintif berhak secara kontrak untuk menambah keperluan linen berdasarkan keperluan hospital, seperti yang dibuktikan oleh pelbagai peruntukan dalam kontrak tersebut. Mahkamah memutuskan bahawa dakwaan defendan bahawa ia tidak menyedari peningkatan keperluan tersebut tidak boleh dipercayai kerana mereka mempunyai akses penuh kepada sistem e-Laundri, yang menjejaki keperluan dalam masa nyata. Mereka mempunyai kakitangan mereka sendiri yang ditugaskan khusus untuk memantau sistem tersebut. Mahkamah mendapati bahawa masa tuntutan balas tersebut dibuat mencadangkan bahawa ia adalah tindak balas taktikal dan bukannya rungutan yang tulen. Walaupun terdapat banyak peluang sebelum ini untuk membantah, ia hanya dibangkitkan selepas tuntutan penalti plaintif. Ketidakkonsistenan dalam jumlah yang dituntut turut menjejaskan lagi kredibilitinya (lihat perenggan 83–85).

(6) Mengambil kira kekurangan dan ketidakkonsistenan keterangan di atas, defendan telah gagal untuk melepaskan beban pembuktiannya dalam membuktikan tuntutan balasnya. Pemakaian inferens bertentangan oleh mahkamah di bawah s 114(g) Akta Keterangan 1950 membenarkan

mahkamah menganggap bahawa keterangan yang ditahan dengan sengaja akan merugikan pihak yang menahannya. Plaintif dengan sewajarnya telah menggunakan anggapan tersebut atas kegagalan defendan memanggil saksi mereka yang terlibat secara langsung dalam perkara ini pada masa yang material (lihat perenggan 86).

(7) Atas sebab-sebab yang dinyatakan di atas, mahkamah mendapati bahawa defendan telah melanggar kontrak tersebut apabila gagal membekalkan linen baru seperti yang dikehendaki, plaintif berhak untuk mengenakan penalti seperti yang dikira, dan tuntutan balas defendan adalah tidak bermerit (lihat perenggan 87).]

Cases referred to

Berjaya Times Squares Sdn Bhd (formerly known as Berjaya Ditan Sdn Bhd) v M Concept Sdn Bhd [2010] 1 MLJ 597, FC (refd)

Cavendish Square Holding BV v El Makdessi; ParkingEye Ltd v Beavis [2016] 2 All ER 519, SC (refd)

CIMB Bank Bhd v Anthony Lawrence Bourke & Anor [2019] 2 MLJ 1, FC (refd)

Cubic Electronics Sdn Bhd (in liquidation) v Mars Telecommunications Sdn Bhd [2019] 6 MLJ 15, FC (refd)

Goss v Lord Nugent (1833) 5 B & Ad 58, KBD (refd)

He-Con Sdn Bhd v Bulyah bt Ishak & Anor (as administrators for the estate of Nor Zainir bin Rahmat, the deceased) and another appeal [2020] 4 MLJ 662, FC (refd)

Johor Coastal Development Sdn Bhd v Constrajaya Sdn Bhd [2009] 4 MLJ 445, FC (refd)

Kluang Wood Products Sdn Bhd & Anor v Hong Leong Finance Bhd & Anor [1999] 1 MLJ 193, FC (refd)

Lau Hee Teah v Hargill Engineering Sdn Bhd & Anor [1980] 1 MLJ 145, FC (refd)

Malaysian Motor Insurance Pool v Tirumeniyar a/l Singara Veloo [2020] 1 MLJ 440, FC (refd)

Miller v Cannon Hill Estates Ltd [1931] 2 KB 113, KBD (refd)

Otto v Bolton and Norris [1936] 2 KB 46, KBD (refd)

Selva Kumar a/l Murugiah v Thiagarajah a/l Retnasamy [1995] 1 MLJ 817, FC (refd)

Selvaduray v Chinniah [1939] 1 MLJ 253, CA (refd)

Sharikat Pemborong Pertanian & Perumahan v Federal Land Development Authority [1971] 2 MLJ 210 (refd)

Silver Corridor Sdn Bhd v Gallant Acres Sdn Bhd & Anor [2016] 5 MLJ 1, FC (refd)

SS Maniam v The State of Perak [1957] 1 MLJ 75 (refd)

Tan Chong and Sons Motor Company Ltd v Yang Chin Lang [1967] 1 MLJ 123 (refd)

Tindok Besar Estate Sdn Bhd v Tinjar Co [1979] 2 MLJ 229, FC (refd)
UEM Group Bhd (previously known as United Engineers (M) Bhd v Genisys Integrated Engineers Pte Ltd & Anor [2018] supp MLJ 363, FC (refd)
Wong Sin Chong & Anor v Bhagwan Singh & Anor [1993] 3 MLJ 679, SC (refd)
Zuraida bt Kamaruddin v Saifuddin Nasution bin Ismail (suing as Secretary General, Parti Keadilan Rakyat for and on behalf of Parti Keadilan Rakyat) [2025] 1 MLJ 912, CA (refd)

Legislation referred to

Contracts Act 1950 s 75
Evidence Act 1950 ss 91, 92, 92(b), 114(g)

Barvina Punnusamy (with Nur Sabrina bt Ahmad Kamal) (Jayadeep Hari & Jamil) for the plaintiff.
Habizan Rahman bin Habeeb Rahman (with Sarina bt Alwi and Anis Afina bt Hassan Sanusi) (Rahman Rohaida) for the defendant.

Arziah Mohamed Apandi JC:

INTRODUCTION

[1] This case is a contractual dispute between Universiti Kebangsaan Malaysia ('the plaintiff'), a public university, and Edgenta Facilities Management Sdn Bhd ('the defendant'), a facilities management company. The case concerns a laundry services contract worth RM17,242,737.48 for the plaintiff's hospital facility, Pusat Perubatan Universiti Kebangsaan Malaysia ('PPUKM').

[2] The contract, executed on 24 October 2016, required the defendant to provide laundry services including the supply of linens at a 'five par' level. The core dispute revolves around whether the defendant was contractually obligated to supply new linens rather than used or recycled linens, and whether the defendant fulfilled this obligation by the extended deadline of 28 February 2017.

[3] The plaintiff claims that the defendant failed to supply the required quantity of new linens by the deadline, resulting in a penalty claim of RM3,996,344.47 calculated according to a formula based on the amount of missing linens, the price per sheet, and the number of days delayed. The plaintiff's claim is grounded in cl 4.3 of Document 8 of the contract.

[4] The defendant denies this obligation, contending that the contract did not explicitly require new linens, and that they fulfilled their obligations by supplying a combination of new linens, existing linens from the previous

vendor, and linens from Kementerian Kesihatan Malaysia ('KKM'). The defendant further argues that the plaintiffs penalty calculation is incorrect because it improperly includes a 'number of days delayed' factor.

[5] Additionally, the defendant has filed a counterclaim of RM3,643,672.25 for allegedly wrongful deductions made by the plaintiff for daily 'owing linens' (not supplied as required).

PARTIES CLAIMS

Background and contract details

[6] The plaintiff executed a three-year contract with the defendant (No PPUKM/P/78/2016) dated 1 September 2016. The contract, valued at RM17,242,737.48, required the defendant to provide workforce, consumables, and all linen-related services for PPUKM, the university's medical centre. The contract period ran from 1 September 2016 to 31 August 2019, with specific terms regarding linen supply requirements detailed in Document 8 and 8A of the Technical Specification Schedule ('the contract').

Contractual requirements and alleged breaches

[7] According to cl 4.1 of Document 8, the defendant was required to maintain a minimum of five par level for each type of linen, comprising: one set for daily use by consumers, one set being washed, one set in consumer storage, and two sets in linen storage. The contract specifically stipulated that the defendant must demonstrate it had established these required par levels within three months from the contract commencement date. The plaintiff claims that the defendant failed to consistently achieve these levels despite having received a three-month time extension (from September 2016 to February 2017) to fully establish the required inventory, as evidenced by a letter dated 27 October 2016, in which the plaintiff approved the defendant's request to extend the deadline for meeting specifications.

The plaintiff's specific claims and penalty calculations

[8] The plaintiff contends that the defendant's failure to maintain adequate linen supplies violates cl 4.3 of Document 8, which provides penalties for insufficient linen quantities. Based on this provision, the plaintiff calculated penalties totalling RM3,996,344.47 from 1 March 2017 to 31 August 2017, applying a formula that multiplies the number of deficient linen items by the price per item by the number of days deficient. The plaintiff argues this calculation method follows the contract's prescribed formula for deficiencies (specified as 'number of deficient linen items x price per unit'). The plaintiff

A further argues that the defendant has refused to pay these penalties despite formal demands, including a demand letter dated 27 November 2018.

Specific linen categories in dispute

B **[9]** There are specific reference deficiencies in the linen categories: (a) OT consultant shirts and pants from September 2016 to July 2017; (b) surgical gowns from September 2016 to September 2017; and (c) various other linens that failed to meet the one par level requirement from January 2018 to July 2019. The plaintiff claims it regularly monitored through an e-Laundry system C that accurately tracked linen inventory levels at user locations, providing documentary evidence of consistent shortfalls below contracted requirements.

The defence arguments

D **[10]** The defendant strongly denies breaching the contract and presents multiple defences. First, they claim to have supplied sufficient linens meeting the five par level requirements, providing a total of 122,540 linen items comprising: 50,582 new PPUKM-specification linens, 47,879 existing E PPUKM-specification linens rented from the previous contractor (Time Network Sdn Bhd) ('Time'), and 24,079 linens meeting KKM's specifications. Second, the defendant argues that during the mobilisation period (September-November 2016), no penalties should apply as this was the agreed setup phase. Third, they contend that the plaintiff unilaterally increased par F level requirements in the e-Laundry system without proper notification, thereby artificially creating deficiencies.

Fabric specification disputes and supply challenges

G **[11]** A significant part of their defence concerns fabric specification changes. They argue that the originally specified intercooler drill fabric for OT Consultant uniforms (items 66 and 67 in Document 8A) was unavailable in the market. When the defendant informed the plaintiff about this issue, the H plaintiff approved a change to the TR viscose fabric on 18 April 2017. Similarly, the defendant claims that the plaintiff requested surgical gowns with 'barrier fabric' specifications contrary to Document 8A, which caused additional delays. The defendant contends that these fabric modification approvals effectively reset the delivery timeline, as manufacturing requires I 30–90 days after material approval, making penalty calculations for these periods inappropriate.

Counterclaim for penalty repayments

[12] The defendant has filed a counterclaim seeking repayment of RM1,110,539.50 in penalties imposed during September 2016 to September 2017, and RM2,533,132.75 for penalties imposed from January 2018 to July 2019. A detailed monthly breakdown of penalties was provided, arguing that they were wrongfully imposed and represent an 'unjust enrichment' by the university. Furthermore, the defendant contends that under cl 44 of the contract, maximum penalties are capped at 10% of the contract value (approximately RM1,724,273.74), suggesting that the plaintiffs penalties exceed this contractual limit and should be returned.

Dispute over penalty formula interpretation

[13] A central dispute concerns the penalty calculation method. While the plaintiff relies on cl 4.3's formula (linen quantity x price per unit), the defendant argues this formula shouldn't include multiplying by the number of days in deficit. The defendant points to a newer tender document (UKM/BENKKL/HCTM/TDR/PKHD-2019(08)) issued by the plaintiff in March 2019 that allegedly uses a different formula, which they interpret as evidence that the plaintiffs current formula is inappropriate. The plaintiff counters that the new tender document is irrelevant to the present contract and has no bearing on the dispute.

E-Laundry system and record-keeping disputes

[14] The defendant challenges the reliability of the plaintiff's e-Laundry system, which was used to track linen quantities and calculate deficiencies. They claim the plaintiff increased the recorded par-level requirements in this system without notification, causing artificial deficiencies. Representatives of both parties met in June and July 2019 to discuss these e-Laundry data collection methods, but no resolution was reached. The defendant argues that this system manipulation falsely inflated the appearance of contract violations and the resulting penalties.

Parties positions on contract interpretation

[15] The plaintiff maintains that only the terms in the contract PPUKM/P/78/2016 are binding for this claim, rejecting references to other tenders or contracts. It is argued that cl 4.4 (regarding general delays) and cl 4.3 (regarding insufficient par levels) of Document 8 address different types of contractual breaches; therefore, different penalty calculations apply. The defendant contends that the penalties imposed exceed the contract's 10% maximum penalty cap and represent a misapplication of the contract terms.

Both parties accuse each other of raising 'afterthoughts' designed merely to offset liability rather than presenting legitimate contractual interpretations.

ISSUES

[16] The court has been tasked to answer the issues on — (a) whether the defendant breached contractual terms in supplying linens according to specifications; (b) whether any proven breach justifies the plaintiff imposing penalties for failures/delays in linen supply; (c) whether the plaintiff is entitled to RM3,996,344.47 or another amount as determined; (d) whether the plaintiff can impose penalties for insufficient daily linen supply during specific periods of September-November 2016 (mobilisation period), OT consultant uniforms (September 2016-July 2017), OT surgical gowns (September 2016-September 2017), linens below par level (January 2018-July 2019); (e) whether the defendant can claim return of penalties for insufficient daily linens (September 2016-September 2017) amounting to RM1,110,539.50; and (f) whether the defendant can claim the return of penalties for insufficient daily linens (January 2018-July 2019) amounting to RM2,533,132.75.

[17] The court makes three principal issues which require determination, namely — (a) whether the defendant was contractually obligated to supply new linens rather than reused linens; (b) whether the plaintiff's penalty calculation method and amount are valid; and (c) whether the defendant's counterclaim for allegedly wrongful deductions has merit.

ANALYSIS

The 'new' linen requirement

[18] The central question is whether the defendant was required to supply *new* linens to fulfil the 'five par level' requirement in the contract, or whether reused/existing linens were acceptable under the contractual terms.

[19] The plaintiff posits that the contract clearly required new linens, based on these arguments:

(a) while the contract doesn't explicitly use the word 'baharu' (new), Documents 8 and 8A, containing specifications, were intended for new linens when interpreted in their proper context;

(b) the defendant's own correspondence acknowledges this obligation through multiple letters, including one dated 17 August 2016 requesting extension time to supply linens, another explicitly stating they would supply '100% keperluan linen baru, spesifikasi PPUKM', and several requests for deadline extensions specifically for supplying new linens;

(c) the minutes from pre-contract meetings on 13 June 2016 and 9 August 2016 recorded discussions where both parties allegedly understood new linens were required;

(d) the substantial contract value (RM17,242,737.48) would make little commercial sense if it merely covered laundering existing linens rather than supplying new ones;

(e) the defendant never disputed this interpretation until after penalties were imposed, suggesting their objection was an afterthought rather than their understanding during the contract execution; and

(f) PW2 (Zuraidah), who chaired pre-contract meetings, testified that it was clearly communicated that new linens were required under the contract specifications.

[20] On the opposite spectrum, the defendant posits that they were not obligated to supply new linens based on these arguments:

(a) the contract does not explicitly state the word 'baharu' (new). Therefore, they argue they could use linens from other sources including KKM and the previous vendor (time);

(b) they fulfilled the five par requirements by supplying a combination of new linens according to PPUKM specifications (50,841 pieces), existing PPUKM-specification linens from the previous contractor (47,880 pieces), and KKM-specification linens (24,569 pieces);

(c) the plaintiffs inclusion of the word 'baharu' in the subsequent tender document proves they recognised this term was missing from the original contract;

(d) while the defendant only formally objected to the 'new linen' interpretation after penalties were imposed in May 2017, they maintain this timing doesn't invalidate their position; and

(e) the formula used to calculate penalties (multiplying by days of delay) conflicts with the formula specified in the contract.

Evidence analysis

[21] All parties' witnesses confirmed that the word 'baharu' does not appear in the contract. The plaintiff's key witness, SP1, who chaired the specifications committee, admitted that the contract doesn't specify new linens and that if the defendant supplied existing linens from the previous contractor, it would satisfy the contract terms.

[22] In the tender that followed this contract, the plaintiff explicitly added the word 'baharu' in cl 7.1 of the new contract, demonstrating they recognised this term was missing from the original contract.

[23] The defendant contended that the plaintiffs reliance on verbal agreements during site visits that required new linens violates the parol evidence rule under ss 91 and 92 of the Evidence Act 1950 ('the EA 1950'), preventing oral evidence from contradicting the written contract.

[24] The defendant also argues that under the G principle of contra proferentum, if the contract is ambiguous, it should be construed against the party who drafted it, here the plaintiff. The rule provides that where a term is ambiguous, such ambiguity should be construed against the party who prepared it. In general contracts, common law courts have quickly applied against 'unfair terms' like exclusion or exemption clauses (see: *Malaysian Motor Insurance Pool v Tirumeniyar a/l Singara Veloo* [2020] 1 MLJ 440 (FC)).

[25] It is evident that when the dispute is premised on the terms of the contract, the contract itself as a whole document must be considered including the factual matrix and background circumstances, business common sense, and commercial purpose. The court must take an objective approach to determining the parties' intentions.

[26] The outcome of the analysis of the evidence shows that the defendant's arguments lack merit on the following grounds. In sequence of orders, the defendant's own letters of correspondence, like the 17 August 2016 and 28 March 2017, acknowledge their obligation to supply new linens.

[27] The minutes of the meetings before the execution of the contract, namely on 13 June 2016 and 9 August 2016, show that the parties understood that new linens were required.

[28] Moreover, the defendant did not bring their main witness, Tun Mash bin Abu Bakar, who signed off on their letters acknowledging the new linen requirements. Naturally, s 114(g) of the EA 1950 would be invoked since no reason was given for the defendant not to call him to the stand. As such, the unfavourable outcome can be reasonably invoked for their failure to bring him.

[29] I thus find that despite the absence of the explicit word 'new' term, ample evidence has been established by the plaintiff that both parties intended and understood that new linens were required and that the defendant's own conduct and correspondence support this interpretation.

[30] Using the objective approach, the court analyses the contract as one whole document to ascertain the intention and understanding of the contracting parties in determining if the new linen is required or not. The facts of the execution of the contract, including the background circumstances leading to the same, had been considered and evaluated. The court finds that the business commences with the sense and commercial purpose of requiring new linens and not used ones.

[31] The defendant's behaviour contradicts their current position. Suppose the used linens were acceptable to the plaintiff. In that case, it defies commercial logic that the defendant would supply a majority of new linens rather than used ones, repeatedly request extensions of time to fulfil the requirement for new linens, and willingly incur additional costs for new linens when used ones would have sufficed.

[32] Even if the defendant would be mistaken for new linen with clean linen, the words new and clean are unrelated and different. The defendant would have to supply clean linen without doubt, making it understood to mean clean linen. The same analogy is put in this case, where when the requirement is for the defendant to supply linen, the sensible and logical commercial meaning would refer to new linen and not used linen to be supplied to the plaintiff.

[33] I had gleaned from the contract and found other terms which the parties did not bring to the court's attention, particularly cl 36(a) and (b) of the contract on the plaintiff's rights when the supply is defective or of low quality. The reference to defective and low quality would, to me, mean new linen. If it is meant for used and new linen, the terminology will not be of low quality since used linen has no quality.

[34] The principles of contractual interpretation are well-established. In *Berjaya Times Squares Sdn Bhd (formerly known as Berjaya Ditan Sdn Bhd) v M Concept Sdn Bhd* [2010] 1 MLJ 597 (FC), the Federal Court held that contracts should be interpreted by the parties' objective intentions, considering not only the literal wording but also the surrounding circumstances and commercial purpose. This approach was further affirmed in *CIMB Bank Bhd v Anthony Lawrence Bourke & Anor* [2019] 2 MLJ 1 (FC), where the Federal Court emphasised that contractual terms must be construed within their entire context.

[35] The Supreme Court in *Tindok Besar Estate Sdn Bhd v Tinjar Co* [1979] 2 MLJ 229 (SC) held that the conduct of parties following the execution of a contract is highly relevant in determining their true intention. This is particularly pertinent in this case, where the defendant's post-contractual conduct evidences an understanding that new linens were required.

[36] The correspondence records prove that both parties understood the contract to require new linens. I am sure that the defendant knew from the start, after they signed the contract, that they must supply new linens. The perusal of their letters dated 17 August 2016, 30 November 2016 and 28 March 2017 all explicitly refer to the requirement to supply 'new linens'. Their letter stated their request for extensions of time specifically to fulfil the supply of new linens (see their letter dated 30 November 2016). Point 3 of the said letter fortified the defendant's awareness of their obligation under the contract to supply new linen since they had requested the plaintiff's approval for them to continue using the services of the former suppliers Salam Sinarmas Sdn Bhd and Time until they were able to supply fully (100%) of the demand for new linen of the PPUKM's requirement latest by 1 March 2017.

[37] In addition, the minutes from meetings held on 13 June 2016 and 9 August 2016 confirm both parties' understanding that new linens were required. Despite having over five representatives present at these meetings, the defendant failed to call any of them as witnesses to rebut this evidence. In *Lau Hee Teah v Hargill Engineering Sdn Bhd & Anor* [1980] 1 MLJ 145 (FC), the Federal Court held that a party's failure to call material witnesses could lead to an adverse inference.

[38] As held in *Sharikat Pemborong Pertanian & Perumahan v Federal Land Development Authority* [1971] 2 MLJ 210 (OCJ), a party's commercial conduct is valuable evidence of their understanding of contractual obligations. In this case, the defendant only contested the 'new linens' requirement after the plaintiff issued penalty demands, suggesting this defence.

[39] The defendant's argument that the parol evidence rule precludes consideration of pre-contractual negotiations must be rejected. While s 91 of the EA 1950 codifies the English common law principle established in cases like *Goss v Lord Nugent* (1833) 5 B & Ad 58, it operates on the fundamental premise that when parties have reduced their agreement to writing, the written document represents the complete and final expression of their intentions. However, the rule does not prevent parties from introducing evidence about events after the contract was signed, such as subsequent modifications, performance or breaches.

[40] The legal reasoning behind the parole evidence rule is the courts' commitment to preserving contractual certainty and protecting the integrity of written agreements (see: *He-Con Sdn Bhd v Bulyah bt Ishak & Anor (as administrators for the estate of Nor Zainir bin Rahmat, the deceased) and another appeal* [2020] 4 MLJ 662 (FC)).

[41] The plaintiff had rightly pointed out the landmark case of *Kluang Wood*

Products Sdn Bhd & Anor v Hong Leong Finance Bhd & Anor [1999] 1 MLJ 193 (FC) where the Federal Court established that where a document is silent on a matter not inconsistent with its terms, the evidence of surrounding circumstances may be admitted. The salient judgment held:

> The existence of any matter on which a document is silent and which is not inconsistent with its terms may be proved, and in considering whether or not this proviso applies, the court shall have regard to the degree of formality of the document.

[42] This principle was previously applied in *Tan Chong and Sons Motor Company Ltd v Yang Chin Lang* [1967] 1 MLJ 123 (OCJ), where oral pre-contractual representations were held admissible when they did not contradict the written terms. In *Otto v Bolton and Norris* [1936] 2 KB 46 and *Miller v Cannon Hill Estates Ltd* [1931] 2 KB 113, the courts similarly allowed parol evidence to establish implied terms that did not contradict express provisions.

[43] The parole evidence rule prohibits parties from introducing evidence of prior oral agreements, preliminary negotiations, or contemporaneous oral agreements when they contradict, modify, or supplement the terms of a final written contract. This rule promotes contractual certainty, prevents perjury, and encourages parties to include all essential terms in their written agreements. The courts apply this rule to preserve the integrity of written contracts and avoid the unreliability of oral testimony about past conversations.

[44] Under this rule, when a contract represents a complete and final expression of the parties' agreement, courts will generally not admit evidence of prior or contemporaneous oral agreements, written negotiations, or other extrinsic evidence that would contradict or modify the written terms. This applies to both parol (oral) evidence and written evidence that predates the final contract.

[45] However, the parol evidence rule is not absolute and has several recognised exceptions. The courts may admit extrinsic evidence to clarify ambiguous terms, prove fraud, duress, or mistake in the formation of the contract, establish conditions precedent that must be satisfied before the contract becomes effective, or demonstrate that a contract is partially integrated rather than completely integrated. Evidence may also be admitted to show subsequent modifications to the contract or to interpret technical terms that may not be clear from the written document alone.

[46] Here, the contract is silent on whether linens must be 'new'. The evidence of the parties' understanding falls squarely within proviso (b) to s 92

of the EA 1950 and therefore is admissible to establish this contractual requirement. Section 92(b) of the EA 1950 states the following:

> (b) the existence of any separate oral agreement, as to any matter on which a document is silent and which is not inconsistent with its terms, may be proved, and in considering whether or not this proviso applies, the court shall have regard to the degree of formality of the document

[47] The subsequent correspondences, including the letters and meetings held, show that the defendant knew they were to supply new linens only. Subsequent conduct is particularly persuasive when representing a practical interpretation of contractual obligations long before any dispute arose. The defendant's repeated acknowledgements of the obligation to supply new linens in correspondence with the plaintiff constitute compelling evidence of the parties' common understanding.

[48] The defendant's conduct before this action strongly supports the interpretation that new linens were required. The defendant never clarified or even enquired if they were to supply only new linens or a mix of new and used linen. Only after the plaintiff levied the penalty payment demands did the defendant raise this issue of new linen, creating the afterthought.

[49] It is an afterthought when the defendant surmised that the word 'new linen' had been inserted in subsequent tenders and is irrelevant and misconstrued. I accept the evidence of SP2, who explained that the insertion of 'new' to the linen clarifies the subsequent tenders that were improvements to the wording and not substantive changes to requirements. With that, I find that it is the parties' common and agreed intention that the linen supplied is new.

Validity of penalty calculation

[50] On this next issue of the penalty charges, the defendant counterclaims that the penalty charges were wrong. Specifically, the defendant disputes the plaintiff's claims for RM1,110,539.50 — penalties imposed on daily owing linens from September 2016 to September 2017 and RM2,533,132.75 — penalties imposed from January 2018 to July 2019, arguing that the plaintiff increased the one par level in the e-Laundry system without their knowledge.

[51] The plaintiff countered these claims by showing that the contract terms permitted such an increase of the one par level — cll 1.6, 2.6.1, 4.6, and 4.7 of Document 8 explicitly stated that the plaintiff could increase linen requirements based on hospital needs and that the defendant knew of the e-Laundry system. SD3, the defendant's Chief Linen Department from

2016–2019, admitted that e-Laundry was a standard system used by both parties and that the defendant had team leaders specifically assigned to monitor the e-Laundry system.

[52] The evidence proved that the defendant had no supporting documents to support their allegations. In contrast, the plaintiff had shown that the defendant only raised the objections to daily owing penalties after receiving UKM's demand letter in May 2017, despite claiming penalties had been wrongfully imposed since September 2016. The first formal objection was made on 30 August 2017, despite claiming wrongful deductions since September 2016.

Detailed analysis of the penalty calculation dispute

[53] The central dispute concerns the correct formula for calculating penalties for the defendant's failure to supply adequate linens. The competing interpretations of the plaintiff are that the quantity of missing linen x price per sheet x number of days delayed, which resulted in a penalty claim of RM3,996,344.47.

[54] But, the defendant contended that to include the 'number of days delayed' was improper and argued for a simpler formula of quantity of missing linen x price per sheet.

[55] The plaintiff gave compelling arguments for their calculation method. It is argued that cl 4.3 of the contract states that penalties will be imposed on the insufficient sheets until the five par requirement is fulfilled. The phrase 'until the requirement is fulfilled' logically incorporates a time element. SP2 (Zuraidah) testified that this wording referred explicitly to the number of days delayed.

[56] An example where the 'number of delays' is applied is in cl 5.3 Document 8 where the penalty was levied for items that are not replaced as per the requirements of cll 5.2.1 and 5.2.2. The supply of linen by the defendant to PPUKM is continuous, and wherever there is a shortfall, the penalty is reasonably charged continuously until the shortfall is zeroed out.

[57] More importantly, the plaintiff demonstrated that this formula was applied consistently throughout the contract period without objection. SD2 admitted that the defendant never questioned the penalty calculation method until after they received the plaintiffs demand letter dated 18 May 2017.

[58] Moreover, SP4 confirmed that the plaintiff showed considerable leniency by applying the lowest price points for each linen category rather than

varying prices by size. The effect is a significant reduction in the potential penalty from approximately RM7.021m to only RM3,996,344.47. In addition, the plaintiff provided detailed calculations (see pp 82–89 of Bundle C2) documenting their methodology. These documents itemise each calculation component and demonstrate transparency in how the final figure was derived. Quoting the Federal Court in *UEM Group Bhd (previously known as United Engineers (M) Bhd v Genisys Integrated Engineers Pte Ltd & Anor* [2018] supp MLJ 363 (FC), it was emphasised that the credibility findings could not be severed from the documentary evidence.

[59] The court analyses the evidence and agrees with the plaintiffs argument because the contractual interpretation of the phrase 'until the five par requirement is fulfilled' in cl 9 of Document 8 logically incorporates a time element, supporting the plaintiffs inclusion of 'days delayed' in their formula. The penalty calculation served the legitimate commercial purpose of encouraging timely compliance with contractual obligations. The court found the plaintiff's calculation reasonable, properly documented, and consistent with contractual terms (see *Selva Kumar a/l Murugiah v Thiagarajah a/l Retnasamy* [1995] 1 MLJ 817 (FC)).

[60] The defendant failed to fulfil this obligation by not supplying the required quantity of new linens within the stipulated timeframe, materially breaching the contract.

[61] When a party seeks to challenge penalty calculations, they must provide timely objections and substantial evidence, not merely assert disagreement after penalties have been imposed. When evaluating penalty provisions, the court takes a practical approach to contractual interpretation, considering both the literal wording and the functional commercial context.

[62] The interpretation of penalty clauses focuses on the commercial purpose and parties' intentions. Post-contractual conduct (particularly the lack of timely objections) significantly determines parties' understanding of contractual terms.

[63] In *Johor Coastal Development Sdn Bhd v Constrajaya Sdn Bhd* [2009] 4 MLJ 445 (FC), the court recognised no distinction between liquidated damages and penalties as understood under English law. Given s 75 of the Contracts Act 1950 ('the CA 1950') which provides that in every case the court must determine the reasonable compensation, 'whether or not actual damage or loss is proved to have been caused thereby'. Further, in quoting Justice Peh Swee Chin FCJ in *Selva Kumar* quoted Thomson J from *SS Maniam v The State of Perak* [1957] 1 MLJ 75 (OCJ):

> In brief, in our law in every case if a sum is named in a contract as the amount to be paid in case of breach it is to be treated as a penalty is.

[64] These references establish that contractual clauses specifying sums to be paid upon breach are treated as penalties and are subject to s 75 of the CA 1950, which requires proof of actual damage before enforcement.

[65] Following the Court of Appeal's decision in *Zuraida bt Kamaruddin v Saifuddin Nasution bin Ismail (suing as Secretary General, Parti Keadilan Rakyat for and on behalf of Parti Keadilan Rakyat)* [2025] 1 MLJ 912 (CA), while finding that the bond was breached, it ruled that the RM10m penalty was unreasonable and disproportionate. In applying the principles from *Cubic Electronics Sdn Bhd (in liquidation) v Mars Telecommunications Sdn Bhd* [2019] 6 MLJ 15 (FC) and *Cavendish Square Holding BV v El Makdessi; ParkingEye Ltd v Beavis* [2016] 2 All ER 519 (SC), it is noted that a penalty clause must protect a legitimate interest and be proportionate to that interest.

[66] The penalty calculation serves the legitimate commercial purpose of encouraging timely compliance with contractual obligations. The calculation methodology is reasonable, transparent, and consistent with commercial practice.

[67] I find the penalty calculation reasonable, properly documented, and following the contractual terms. The total amount of RM3,996,344.47 is justified and supported by the evidence.

The wrongful deductions dispute

[68] The issue of wrongful deduction is a significant dispute in the counterclaim where the defendant contended that the plaintiff wrongfully deducted payments for 'daily owing linens'. The defendant's arguments asserting that the plaintiff's deductions were wrongful are broken into the following areas of disputes.

Specification issues for specialised items

[69] The defendant claimed it couldn't be penalised for failing to supply certain specialised linens because the specifications weren't finalised until well after the contract started. On the OT specialist shirts and pants, it was argued that penalties from September 2016 to July 2017 were invalid because the plaintiff only approved the change in specification from intercooler drill (which wasn't available in the market) to TR viscose on 18 April 2017. The same was argued on the OT gowns where it was maintained that penalties from

A September 2016 to September 2017 were improper since the plaintiff only approved the OT gown design around 20 September 2017.

[70] The defendant found support from the plaintiff's own witnesses where SP1 (being the chair of the specification preparation committee) admitted she hadn't verified whether intercooler drill fabric was available in the market before including it in specifications. Also, SP4 confirmed that the plaintiff didn't impose five par penalties for OT specialist clothing and OT gowns precisely because of specification issues.

C Unilateral par level increases

[71] The defendant claimed that the plaintiff unilaterally increased the one par level requirements in the e-Laundry system without proper notification. They presented calculations showing that the one par level for certain items like bath towels was increased from 20 units (as per Document 8A) to 108 units without notice. This allegedly resulted in improper 'daily owing' penalties of RM2,084,512.90 between January 2018 and July 2019.

E Mobilisation period argument

[72] The defendant contended that no penalties should have been imposed during the first three months of the contract (from September until November 2016), which they characterised as a 'mobilisation period': They argued that producing and supplying linens takes 30–60 days from order date, making it unreasonable to impose penalties immediately. These improper deductions allegedly amounted to RM700,553.

[73] Additionally, they argue that penalties for 'daily owing linens' were unfair because they weren't given sufficient time during the mobilisation period, some specifications were only approved later in the contract and quantities were increased without proper notification.

[74] The plaintiff's position is that the contract required new linens meeting PPUKM specifications. The defendant failed to supply five par level of new linens by the extended deadline (28 February 2017). As such, the plaintiff is entitled to impose penalties as per cl 4.3 of Document 8, calculated as: quantity of linen x price per sheet x number of days delayed.

[75] The plaintiff's rebuttals are premised on the contract and the e-Laundry system. The plaintiff emphasised that the contract explicitly permitted increasing linen requirements. Clause 1.6 of Document 8 allowed the plaintiff to increase linen requirements based on patient numbers and bed increases.

While cll 2.6.1, 4.6, and 4.7 established the defendant's agreement to increase linens to fulfil the plaintiff's requirements at all times.

[76] The plaintiff contends that they had demonstrated that the defendant had full knowledge of the system used to track linen requirements. It can be seen from SD3 (the defendant's Ketua Bahagian Linen from 2016–2019) who said that the e-Laundry system was common to both parties. She admitted that the defendant had 30 staff members in the linen department, including team leaders specifically assigned to monitor the e-Laundry system and receive complaints about it. Therefore, it is evident that the defendant had access to and monitored the system, undermining their claims about unilateral increases to par requirements. The shared system used by both parties undermines the defendant's claim that they were unaware of the requirement changes, as they had dedicated staff monitoring this system.

[77] The plaintiff also highlighted that the defendant lacked any concrete evidence supporting the defendant's counterclaim via SD3, who admitted under cross-examination that no supporting documents showed exactly what amounts were deducted. SD3 also revealed that the calculations she prepared were the defendant's retrospective internal documents, created only in 2022, after the case had commenced, and had not become contemporaneous records.

[78] The court's analysis of the wrongful deductions issue shows the plaintiff's arguments are of supported by the evidence. The burden of proof rests on the party asserting a claim. As established in *Selvaduray v Chinniah* [1939] 1 MLJ 253 (CA), a claimant must prove their claim on a balance of probabilities with credible evidence.

[79] The contract explicitly permits the plaintiff to increase linen requirements based on hospital needs, as evidenced by such terms (see pp 87, 90, 96, and 97). In *Berjaya Times Squares Sdn Bhd (formerly known as Berjaya Ditan Sdn Bhd) v M Concept Sdn Bhd* [2010] 1 MLJ 597 (FC), the Federal Court emphasised that express contractual terms must be given their full effect.

[80] The defendant failed to meet the burden of proof necessary for their counterclaim, as no documentary evidence, such as payment records, invoices, receipts or accounting entries, was produced to support the alleged deductions. As held in *Silver Corridor Sdn Bhd v Gallant Acres Sdn Bhd & Anor* [2016] 5 MLJ 1 (FC), the court will draw adverse inferences against a party that fails to call key witnesses without explanation, especially when those witnesses had personal knowledge of the transactions, the witnesses were available but not called and the party provided no reason for their absence.

[81] SD3's admissions that her calculations were based on estimations rather than actual records significantly undermined the counterclaim. The calculations submitted were made very late and differed materially from the amounts pleaded, further reducing the credibility of her calculations. In *Wong Sin Chong & Anor v Bhagwan Singh & Anor* [1993] 3 MLJ 679 (FC), the Federal Court held that a party's witness contradicting the pleaded case weakened that case.

[82] The defendant admitted in their submissions that the amount they pleaded differs from the amount calculated in their submissions. This inconsistency further undermines the reliability of the counterclaim, leading to no evidence being established (see: *Tindok Besar Estate Sdn Bhd v Tinjar Co* [1979] 2 MLJ 229 (FC)).

[83] The court found that the plaintiff was contractually entitled to increase linen requirements based on hospital needs, as evidenced by multiple provisions in the contract.

[84] The court determined that the defendant's contention that it was unaware of the requirement increase wasn't credible since they had full access to the e-Laundry system, which tracked requirements in real-time. They had their own staff who were specifically assigned to monitor the system.

[85] The court noted that the timing of the counterclaim suggested it was a tactical response rather than a genuine grievance. Despite ample prior opportunity to object, it was only raised after the plaintiff's penalty claim. The inconsistencies in the amounts claimed further undermined credibility.

[86] In light of these evidentiary deficiencies and inconsistencies, the defendant has failed to discharge its burden of proof in establishing its counterclaim. The court's application of the adverse inference of s 114(g) of the EA 1950 allows courts to presume that evidence deliberately withheld would be unfavourable to the party withholding it. In *Tindok Besar,* this presumption was invoked correctly. The plaintiff appropriately invoked the same for the defendant's failure to call their witnesses who were directly involved in this matter at that material time.

CONCLUSION

[87] For the reasons stated above, I find that the defendant breached the contract by failing to supply new linens as required, the plaintiff is entitled to impose the penalty as calculated, and the defendant's counterclaim is without merit. Accordingly, I allow the plaintiffs claim with costs for RM3,996,344.47 with interest at 5%pa from the date of filing until full settlement. The

defendant's counterclaim is hereby dismissed with costs.

Plaintiff's claim allowed (with costs) for RM3,996,344.47 with interest at 5%pa from date of filing until full settlement; defendant's counterclaim dismissed with costs.

Reported by Dzulqarnain Ab Fatar